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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/759,423	01/12/2001	Paul Green	PGR-100	2318

23557 7590 09/26/2005

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EXAMINER

WATSON, ROBERT C

ART UNIT	PAPER NUMBER
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3723

DATE MAILED: 09/26/2005

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/759,423
Filing Date: January 12, 2001
Appellant(s): GREEN, PAUL

MAILED

SEP 26 2005

Group 3700

James S. Parker
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 8/12/05 appealing from the Office
action mailed 11/10/04.

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(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is not correct. Applicant states in the Brief (page 22) that "Claims 23-37 were cancelled in Amendment dated September 22, 2003". However, the September 22, 2003 amendment (page 6) clearly states that "Claims 23-37 have been withdrawn".

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

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The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

Number	Name	Date
3,345,037	Sweetland, E.J.	10/3/1967
4,176,824	Linton et al	12/04/1979
4,623,125	Ebey, E.	11/18/1986

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 39-41 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The recitation in the claims that "the A-frame coupler is designed to couple to a hitch ball", and the reference to "a ball socket" is new matter.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-2, 21-22, and 38-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sweetland in view of Linton et al.

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Sweetland shows a jack coupled to an A-frame coupler of a trailer. The jack is removable from the trailer for the sole purpose of stowing the jack in a remote location so that the jack will not be in the way when the trailer is driven along the ground. The A-frame coupler is supported by a vehicle by a ball socket fitting (Sweetland, column 2, lines 35-38).

Linton et al shows a vehicle jack selectively mountable on a vehicle such that the jack may be stowed in an "up" location on the vehicle so that the jack will not be in the way when the vehicle is driven along the ground. The mounting arrangement comprises a first piece 38 mounted to the vehicle and a second piece 32 mounted to the vehicle jack. The second piece can transition between a plurality of vertical positions relative to the first piece by virtue of the plural vertically spaced apertures 36 on the second piece. Pins 44 provide a means for releasably securing the second piece selectively relative to the first piece. When the vehicle is driven along the ground pins 44 are placed in the lowermost pair of apertures 36 to raise the jack clear of the ground so that the jack will not be in the way (Linton et al, column 1, line 67 – column 2, line 7).

To employ anywhere on the Sweetland trailer A-frame coupler a first piece mounted to the trailer and a second piece mounted to the vehicle jack would have been obvious for one skilled in the art at the time the invention was made in view of the disclosure of Linton et al. One of ordinary skill in the art would have been motivated to do this in order to enable the A-frame mounted jack of Sweetland to be stowed in a much more convenient "up" location on the trailer so that the jack will not be in the way when the trailer is driven along the ground.

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The existing stowing feature of Sweetland is, on its face, inconvenient since in order to stow the jack it requires the complete removal of the jack from the trailer and the subsequent stowing in some remote location before the trailer can be driven along the ground.

Recitations in the claim as to details of the vehicle A-frame having a hole have not been given patentable weight since this is not part of the trailer jack mounting apparatus. In any case, the Sweetland vehicle A-frame has a hole 25.

Claims 3-12 and 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sweetland in view of Linton et al as above applied taken with Ebey.

The Sweetland in view of Linton et al mount arrangement as above applied lacks a means of selectively pivoting the jack to a horizontal stowed position.

Ebey teaches that by virtue of providing mating apertures and a locking pin a jack can be selectively pivotable between a vertical use position and a horizontal stowed position.

To provide addition mating holes in the first or second mounting pieces of Sweetland in view of Linton et al supra so as to enable the vehicle jack to be pivoted between a vertical use position and a horizontal stowed position would have been obvious for one skilled in the art at the time the invention was made in view of the disclosure of Ebey. One of ordinary skill in the art would have been

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motivated to do this in order to enable the jack to be conveniently pivoted from a use to a horizontal stored position.

Claims 23-37 stand withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made by original presentation of claims and no traverse has been made.

(10) Response to Argument

Applicant's main argument regarding the 35USC103 rejection of Sweetland in view of Linton et al is that by making such a modification to Sweetland would result in destroying the principal object of the Sweetland invention. Applicant characterizes the principal object of the Sweetland invention as the "removeability" of the Sweetland jack.

Firstly, applicant is in error in characterizing the principal object of the Sweetland invention as the "removeability" of the Sweetland jack. It is the examiner's position that the principal object of the Sweetland invention is the stowability of the Sweetland jack and not the removability of the Sweetland jack. The stowing of the jack is achieved in Sweetland by inconveniently removing the jack from the trailer and then inconveniently stowing the jack in a remote location away from the trailer. Subsequently, when it is desired to lift the trailer again the user must inconveniently go to the remote location where the jack has been stored, inconveniently bring the jack back to the trailer, and then inconveniently reassemble the jack to the trailer. There is absolutely no reason for the removability of the Sweetland jack other than to stow the jack remotely so that

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the jack is out of the way when the trailer moves along the ground. Clearly the principal object of the Sweetland jack is the stowability of the jack and not the removability of the jack.

Secondly, the proposed modification of the Sweetland jack by the Linton et al teaching does not destroy the principal object of stowability of the Sweetland jack. Quite the contrary, the proposed modification of the Sweetland jack by the Linton et al teaching actually enhances the principal object of the Sweetland jack by providing a more convenient, on site, on the trailer, method of stowing the jack. Applicant has misunderstood the principal object of Sweetland by thinking that "removability" of the jack in Sweetland is an end in and of itself and that there is some special benefit that derives from this "removability". In fact, the "removability" of the Sweetland jack has no end in and of itself since the Sweetland jack is not disclosed as having any functional use when the jack is removed from the Sweetland trailer. Applicant's Brief has not suggested that there is some functional use that is put to the Sweetland jack when the jack is removed from the trailer. Quite simply, the removed Sweetland jack is stowed somewhere and is never used until it is reconnected to the trailer at some subsequent time when the jack is again needed to raise the trailer. The Sweetland invention provides a less convenient, off site, off the trailer, method of stowing the jack than the enhanced stowing method taught by Linton et al. It is submitted that one skilled in the art would readily see the efficacy of the Linton et al teaching of providing a more convenient, on site, on the trailer, method of stowing a vehicle jack and be motivated to provide for this alternative and more

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convenient stowability of the jack on the Sweetland trailer rather than the inconvenient stowability that exists in Sweetland. It is respectfully submitted that Sweetland's principal object is not destroyed by modifying Sweetland in the manner taught by Linton et al and that it would have been obvious for one skilled in the art to have modified Sweetland in the manner taught by Linton et al.

Finally, the environment of use that the device is intended to be used in should not be accorded patentable significance. Applicant is claiming "a mounting apparatus" per se. It should be noted that a jack and a trailer are not part of the claimed combination. Accordingly, Claim 1 is merely claiming a first piece and a second piece, whereby the first and second pieces can transition between a plurality of positions. The references as applied clearly show this broadly claimed feature. Even giving patentable significance to the nonsubstantive intended use recited in the claims the references as applied also show this nonsubstantive intended use.

With regard to the further 35USC103 rejection of claims 3-12 and 41 under Sweetland in view of Linton et al taken with Ebey applicant offers no specific arguments as to what structure is not shown by this combination of references. Instead, applicant merely "incorporates arguments regarding claim 1".

With regard to the 35USC112 new matter rejection of claims 39-41 applicant states (Applicant's Brief, page 2) that the support for the "hitch ball" and the "ball socket" is found in Figure 1A. The examiner does not see any "hitch

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ball" or "ball socket" in Figure 1A. The 35USC112 new matter rejection of claims 39-41 is therefor appropriate.

Finally, Applicant's Brief makes mention of the March 26, 2004 37 CFR 1.132 Affidavit of E. Paul Green. However, this affidavit is directed mainly to a discussion of the feature of the "A-frame coupler" that is inferentially recited in the claims but is not part of the claimed mounting apparatus per se. The "A-frame coupler" is part of a trailer and is not part of the mounting apparatus. Since applicant's claims are directed solely to a mounting apparatus per se and not to a trailer or a trailer's A-frame coupler this affidavit is not found to be commensurate with the scope of the claims which are directed only to a mounting apparatus per se. The affidavit was therefore found to be of little value.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



Robert C. Watson

Conferees:

Joseph J. Hai

Allan N. Shoap

